

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**UNITED STATES OF AMERICA,**

**v.**

**1:05-cr-372-WSD**

**MIRTHA DE LOS SANTOS,**

**Defendants.**

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**OPINION AND ORDER**

This matter is before the Court on Defendant Mirtha de los Santos's ("Defendant") Objections [201] to the Report & Recommendation [200] issued by Magistrate Judge Janet F. King on April 11, 2007 on Defendant's Motion to Suppress Statements [193]. In the Motion to Suppress, Defendant moved to exclude statements she made during an interview conducted by agents of the Drug Enforcement Administration ("DEA") on August 30, 2006. Defendant argues she made the statements while she was in custody and that she was not read the warnings required by Miranda v. Arizona, 384 U.S. 436 (1966), thus her Fifth and Sixth Amendment rights were violated. The Magistrate Judge conducted an evidentiary hearing and found that Defendant's interrogation was not custodial and

that Defendant had been read her Miranda rights. The Magistrate Judge recommended the Motion to Suppress be denied.

In her Objections, Defendant essentially contests the Magistrate Judge's findings of fact. Specifically, Defendant claims the Magistrate Judge should not have accepted the testimony of the DEA agents who testified at the evidentiary hearing that Defendant was free to leave and that she was read her Miranda rights. Defendant argues the Magistrate Judge should have discredited Agent Calvo's testimony and instead accepted her version of the interrogation. Specifically, she argues the Magistrate Judge should have concluded that she was not free to leave the interview and was not read her Miranda rights.

## **I. STANDARD OF REVIEW**

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject or modify a judge's report and recommendation. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specify proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(c). This requires that the district judge "give fresh consideration to

those issues to which specific objection has been made by a party.”

Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (quoting H.R. 1609, 94th Cong., § 2 (1976)). With respect to those findings and recommendations to which the Defendant has not asserted objections, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

## **II. DISCUSSION**

The issue before the Court is how to interpret the facts presented at the evidentiary hearing, and the Court carefully has reviewed the transcript of the hearing in light of Defendant’s objections . The Court finds the facts set forth in the R&R are well founded based on the testimony presented at the hearing. The Court further finds Defendant’s version of the facts are inconsistent with the testimony presented by the testifying DEA agents and that her version of the facts is not reasonable. Specifically, the Court agrees that Defendant was not under arrest or in custody, and that she was free to leave and indeed was free not to accompany the agents to the interview. The Court finds the totality of the circumstances compels the conclusion that the interview of the Defendant was not custodial. Stansbury v. California, 511 U.S. 318, 322-23 (1994); United States v.


Muegge, 225 F.3d 1267, 1270 (11<sup>th</sup> Cir. 2000); United States v. Street, 472 F.3d 1298, 1309 (11<sup>th</sup> Cir. 2006). The Court further finds the evidence established that Defendant was read her Miranda rights.

Finally, the Court finds that Defendant's Sixth Amendment right to counsel did not attach at the August 30, 2006 interview. Even though Defendant received Miranda warnings, she did not request a lawyer. The Court concludes that Defendant's statements to DEA agents on August 30, 2006 were not elicited in violation of Defendant's constitutional rights. Accordingly,

**IT IS HEREBY ORDERED** that the Defendant's Objections to Magistrate Judge's Report & Recommendations [201] are **OVERRULED**.

**IT IS FURTHER ORDERED** that the Court **ADOPTS AS ITS ORDER** the Report and Recommendation [200], and Defendant's Motion to Suppress Statements [193] is **DENIED**.

**SO ORDERED** this 13th day of August, 2007.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE